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ABSTRACT

Testimony by the National Tribal Chairmen's Association (NTCA) states NTCA's opposition to S. 991 Section 7 (9) involving transfer of education programs out of the Bureau of Indian Affairs (BIA), Department of Interior (DOI), into the proposed Department of Education. Reasons for keeping education services of federally recognized tribes within BIA/DOI continuance and improvement of education services to tribes will be better assured within the protection of the trust responsibility administered by BIA/DOI (a tribal-centered rather than a state-focused delivery system); BIA/DOI assures safeguards and maintenance of specifics of the federal trust responsibility, including tribal involvement in development of Indian education, standards for recognition and eligibility of tribes for services, and assurance of Indian preference; the President's Reorganization Project recommendation for transferring BIA education programs was made without full consultation with the tribes; education services provided outside the BIA are not adequate (other offices should put dollars set aside for serving federally recognized tribes into BIA so tribes could contract for these programs via P.L. 93-638); the tribes have already repudiated (1976) Indian inclusion into a proposed Department of Education and the majority will continue to reject transfer to any department where the federal trust responsibility is not guaranteed. (JC)

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TESTIMONY BEFORE THE
COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

ON

S. 991

BY THE

NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

May 16, 1978

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The National Tribal Chairmen's Association appreciates the opportunity to present testimony on S. 991 before the Committee on Governmental Affairs.

Our position is one of total opposition to the transfer of education programs out of the Bureau of Indian Affairs, Department of the Interior, to the proposed Department of Education. We request that Congress delete from S. 991, Section 7 (9).

Before we state the reasons why we insist on remaining within the protection of the BIA in the Department of the Interior and why we are opposed to Section 7 (9) of S. 991, we wish to assure the Committee that we do not oppose the benefits that a proposed Department of Education would bring to the non-Indian population and that we understand why the National Education Association supports the concept of the bill. We also respect the overall intent of the co-sponsors of S. 991 and are convinced that the majority of the Senators did not realize that Section 7 (9) includes no guarantees for the protection of the trust relationship between tribes and the federal government.

The primary reasons why the National Tribal Chairmen's Association believes that education services of the federally recognized tribes must remain with the BIA-DO and why we must not be included in S. 991 are:

1. CONTINUANCE AND IMPROVEMENT OF EDUCATION SERVICES TO THE TRIBES WILL BE BETTER ASSURED WITHIN THE PROTECTION OF THE TRUST RESPONSIBILITY AS ADMINISTERED BY THE BIA-DO BECAUSE IT IS A TRIBAL-CENTERED DELIVERY SYSTEM RATHER THAN A STATE-FOCUSED DELIVERY SYSTEM.

2. THE BIA-DO ASSURES SAFEGUARDS AND MAINTENANCE OF THE SPECIFICS OF THE FEDERAL TRUST RESPONSIBILITY THAT INCLUDE TRIBAL INVOLVEMENT IN THE DEVELOPMENT OF A COMPREHENSIVE INDIAN EDUCATION STRATEGY, STANDARDS FOR RECOGNITION AND ELIGIBILITY OF MEMBERS OF THE FEDERALLY RECOGNIZED TRIBES FOR SERVICES, ASSURANCE OF INDIAN PREFERENCE AND PROCESSES FOR IMPLEMENTATION OF THE

INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT. S. 991 CONTAINS NONE OF THESE ASSURANCES NOR DOES IT CONTAIN SAFEGUARDS FOR THE TRUST RESPONSIBILITY.

3. THE PRESIDENT'S REORGANIZATION PROJECT RECOMMENDATION FOR TRANSFER OF BIA EDUCATION PROGRAMS HAS BEEN MADE WITHOUT FULL CONSULTATION WITH THE TRIBES. THE PRP STAFF HAS NOT OBSERVED PROTOCOL OR COURTESY IN REGARD TO THE ELECTED LEADERS OF TRIBAL GOVERNMENTS. THERE WAS A TOTAL ABSENCE OF CONSULTATION WITH THE HEADS OF TRIBAL GOVERNMENTS PRIOR TO THE PRP AND OMB DECISION TO REMOVE EDUCATION FROM THE BIA. THE PRP HAS MADE A MOCKERY OF JIMMY CARTER'S OCTOBER 14, 1976, PROMISE TO THE HEADS OF TRIBAL GOVERNMENTS NOT TO TAKE "UNILATERAL ACTION ON ANY ISSUE REGARDING INDIAN AFFAIRS OR INDIAN PROGRAMS WITHOUT FULL CONSULTATION WITH TRIBAL REPRESENTATIVES."

4. EDUCATION SERVICES PROVIDED OUTSIDE THE BIA ARE NOT ADEQUATE. THE TRIBES ARE CONCERNED THAT SHOULD THE NEW DOE PROVIDE EDUCATION SERVICES, GUIDELINES AND STRUCTURES SIMILAR TO THOSE NOW PROVIDED BY THE OFFICE OF INDIAN EDUCATION, DHEW, THEN THE FEDERALLY RECOGNIZED TRIBES WOULD NOT BE WELL SERVED. OTHER DHEW EDUCATION OFFICES, INSTITUTES AND BUREAUS HAVE INADEQUATELY SERVED THE FEDERALLY RECOGNIZED TRIBES. DHEW AND OE EDUCATION SERVICES NOW PURPORTEDLY PROVIDED TO THE TRIBES BY SUCH PROGRAMS AS THE OFFICE OF INDIAN EDUCATION, THE NATIONAL INSTITUTE OF EDUCATION, THE FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION, THE BUREAU OF EDUCATION FOR THE HANDICAPPED, THE OFFICE OF GIFTED AND TALENTED, MIGHT BETTER SERVE THE FEDERALLY RECOGNIZED TRIBES IF SET-ASIDE DOLLARS FOR SERVICES FOR THE FEDERALLY RECOGNIZED TRIBES COULD BE TRANSFERRED TO THE BUREAU OF INDIAN AFFAIRS SO THAT TRIBES COULD CONTRACT FOR THESE EDUCATION PROGRAMS THROUGH P.L. 93-638. TRIBES MAY CONSIDER SUCH A TRANSFER TO BIA IF IT WOULD INCREASE ACCOUNTABILITY. WE ARE SHOCKED ABOUT THE ACCOUNTABILITY OF DHEW AND SECRETARY JOSEPH CALIFANO'S APRIL 3, 1978, ANNOUNCEMENT THAT HIS DEPARTMENT HAD "MISSPENT" BETWEEN \$6.3 BILLION AND \$7.4 BILLION IN FISCAL YEAR 1977 DUE TO WASTE, FRAUD, AND ABUSE.

5. THE TRIBES HAVE ALREADY REPUDIATED (JN 1976) INDIAN INCLUSION INTO A PROPOSED DEPARTMENT OF EDUCATION WHEN IT WAS RECOMMENDED IN THE AMERICAN INDIAN POLICY REVIEW COMMISSION FINAL REPORT BY ONE INDIVIDUAL WHO WAS A MEMBER OF THE TASK FORCE V ON INDIAN EDUCATION.

THE MAJORITY OF THE TRIBES WILL CONTINUE TO REJECT TRANSFER OF EDUCATION AND OTHER PROGRAMS TO ANY DEPARTMENT WHERE THE FEDERAL TRUST RESPONSIBILITY IS NOT GUARANTEED.

Our testimony will provide more detail and background to the five basic points.

1. DISMANTLEMENT OF THE BIA AND TRUST RESPONSIBILITY

It appears to be the intent of the President's Reorganization Project and the Office of Management and Budget, in their recommendations to remove education from the BIA, to covertly dismantle the Bureau and thus emasculate that agency which has had the historic responsibility of fulfilling treaty and statutory obligations to the tribes.

Not only has the Administration made recommendations to the Congress to begin to dismantle the BIA without tribal consultation, but it has made this recommendation in conflict with its mandate to the Secretary of the Department of the Interior to establish a major Departmental Task Force to study and make a report on the Reorganization of the BIA. The Task Force, in its report of March, 1978, recommended against transfer of Indian Education programs from the BIA. This report was released for review and comment on April 17, 1978. It appears that the Administration was so eager to dismantle the BIA that it cared little what comment and review by the tribes might reveal after that had studied all aspects of the report in the 60-day period after release.

The Administration's recommendation for dismantlement of the BIA that is implied by the removal of education programs is in conflict with the intent of Congress as articulated in P.L. 93-638, Sec. 3 (a) (b): "The Congress declares its commitment to the maintenance of the federal government's unique

and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct and administration of those programs and services."

The report from the BIA Reorganization Task Force strongly advised that the federal government be definitively committed to trust responsibility that would be a basic foundation for U.S. relationships with Indian tribes and Alaskan Natives. The report further recommended that the philosophy of education for Indians and Alaskan Natives should reflect: "respect for traditional cultural beliefs, retaining strong identities as tribes...; historical and traditional rights to education of tribes because of the special relationship with the federal government; and self-determination." Implementation task forces will soon develop management structures based on the recommendations.

During the past 8 or 9 years, tribes have made remarkable advances in education. There are now nearly 20 tribally chartered colleges. Several tribes have established departments or divisions of education along with needs assessments and educational codes. Nearly 20,000 Indian college students are receiving BIA scholarships.

A majority of the tribes believe that increased tribal control of education within the context of the trust protection of the BIA-DOI will result in strong tribal specific education systems designed to reinforce cultural continuity and economic survival. Tribes recognize that the BIA has many changes to make regarding policy direction, management systems and provision of services in the areas of research, testing, bicultural and linguistic programs, programs for the gifted and talented, the handicapped, preservice and inservice teacher training, technical support of the nearly 20 tribally controlled colleges on the reservations, as well as substantial assistance to the tribes in the development of tribal divisions of education and education codes. The National Tribal

the Assistant Secretary of the Interior will implement these changes.

2. LACK OF SAFEGUARDS. IN S.991 ASSURING UNITED STATES TRUST RESPONSIBILITY TO TRIBES:

Section 5(a) and (b) (1-7) addresses general functions of the Department of Education including promotion and advancement of education for entire United States population. Nowhere in this section is the trust relationship with tribes or the federal government's trust responsibility mentioned. Safeguards are lacking for the federally recognized tribes.

Section 7(9) describes transfer of the operation of Indian schools. There is no language in this section or elsewhere in the bill that describes assurance of maintenance of the trust responsibility to the tribes; there is no language that guarantees that there will be tribal involvement in the development of a comprehensive Indian education strategy; there is no language that describes how more effective coordination and delivery of federal Indian education efforts would be promoted; there is no language that gives assurance of Indian preference; there is no language describing how the proposed Department of Education would deliver educational services to the tribes; there is no description of how the Secretary of the Department of Education would define is an Indian for purposes of eligibility; there is no description of how the transfer would affect the tribes in the context of broad legal ramifications; there is no language in the bill that describes the budgetary impact of such a transfer to the tribes; nor is there language that explains how the Indian Self-Determination and Education Assistance Act would be implemented in the proposed Department of Education. Indian preference is not mentioned in S.9

All of these omissions are too glaring to be ignored. We cannot agree to be relocated away from a Department that recognizes the trust resp

bility to the tribes into a proposed Department that could mean the final annihilation of the tribes in the United States.

We must ask why such language has not been included? We must ask why we are being relocated again or being transferred without substantive language in the enabling legislation that would guarantee safeguards for the trust responsibility?

There is absolutely no written word anywhere in the bill that the tribes can hang even a little bit of hope on. Since these are perilous times for the federally recognized tribes, we must again say no to transfer without safeguards. Our past experience with vacillating and destructive federal Indian policies such as the Dawes Act, the Indian Relocation Program and the termination policy of the 50's has caused us to be wary of recommendations for major shifts of functional responsibility without tribal consultation.

With the BIA-DOI tribes can rely on tribal involvement in the development of a comprehensive Indian education strategy. Tribes are assured that the BIA has standards for recognition and eligibility of members of the federally recognized tribes. The BIA understands Indian preference. The BIA-DOI has attorneys and other staff to assure implementation of PL 93-638 as well as protection of the trust responsibility.

3. LACK OF PRP TRIBAL CONSULTATION:

Richard A Pettigrew, Assistant to the President for Reorganization sent a letter on May 2, 1978 to William Youpee, Executive Director of the National Tribal Chairmen's Association, that stated, "substantial consultation regarding the placement of Indian education programs has taken place between representatives of the President's Reorganization Project and Indian leadership." Consultation regarding the placement of Indian education programs between the PRP and the elected leaders of the federally recognized tribes has not occurred.

There is an obvious lack of understanding on the part of the PRP about the definition of Indian leadership and about the meaning of the historic government-to-government relationship between the federal government and the tribal governments. This lack of understanding is beginning to be rampant among not only the White House staff but among many Congressional aides. We have come to the ridiculous state of affairs where nearly any Indian or group of Indians, self proclaimed or real, can be cornered and consulted by officials who then imagine that they have talked to Indian leadership. A real and serious danger exists because non-elected Indian persons and persons not sanctioned by tribal governments are literally undermining the rights and liberties of the tribes that are guaranteed to the tribes by solemn treaties and the Acts of Congress.

It must be stressed that non-elected individuals cannot speak for the tribes unless the tribes have given them that authority. Although many professional Indian organizations in such fields as education, health, law, medicine, social work, etc. exist today, these organizations can only give advice to the tribes. Many such organizations enjoy the respect of the tribes. Tribal governments often solicit the informed opinion and advice of individuals and such organizations. But the fate of the tribes, the very survival of the tribes cannot be vested in individuals or organizations that are not sanctioned by the federally recognized and treaty tribes.

We plead that the Congress and the President inform their aides and staff of the protocol required in seeking consultation with tribal governments and their sanctioned representatives. Because true consultation with the elected leaders of tribal governments regarding the removal of education from the BIA has not occurred, we respectfully request that the Committee on Governmental Affairs delete and remove those provisions included in S.991

that would remove education from the Bureau of Indian Affairs, Department of the Interior.

4. EDUCATION SERVICES PROVIDED OUTSIDE THE BIA ARE NOT ADEQUATE:

In recent years since the establishment of the Office of Indian Education, DHEW, the federally recognized tribes have become more and more concerned that the very loose definition of "Indian" contained in OIE's enabling legislation has resulted in serious abuses of the utilization of Indian education appropriations. Persons of infinitesimal degree of Indian blood are being served. Too many federally recognized tribes do not get their fair share of program monies. Indian preference is a joke in the OIE because Indian preference has come to mean that anyone who self-identifies as an Indian may claim preference. Management systems, the delivery and monitoring system, planning and the advisory structure have also been a disappointment to the tribes.

A similar situation pertaining to Indian preference and eligibility also exists in all other DHEW programs relating to Indian education. No Indian professional that is a member of a federally recognized tribe is employed by the National Institute of Education, the Fund for the Improvement of Post Secondary Education, the Office of Bilingual Education, the Bureau of Education for the Handicapped, the Office of the Gifted and Talented, the Ethnic Heritage Act, the Office of Migrant Education, the Women's Equity Act, or others.

In 1955 tribes were not consulted when the Indian Health Service was removed from the BIA and placed in DHEW. Since that time, tribes have fought an uphill battle to get Indian preference implemented.

Tribes now watch helplessly as the definition of Indian is being threatened with dilution in IHS-DHEW. Self-identified persons on the east coast are asking their governors for letters of recognition and are changing their driver's licenses to read "Indian" so they may receive IHS services.

IHS-DHEW solicitors are now pondering the problem.

Since DHEW has such a hard time determining who is an Indian, and since it has such a hard time implementing Indian preference, what guarantees would the federally recognized tribes have for Indian preference and a consistent definition of Indian in the proposed Department of Education?

5. TRIBES HAVE ALREADY REJECTED INCLUSION IN A PROPOSED DEPARTMENT OF EDUCATION:

In the fall of 1976 the Final Report of the American Policy Review Commission was released. Also released was the Task Force V Report on Indian Education. A major recommendation in the published Report was that Indian education should be removed from the BIA and relocated to a proposed Department of Education. This recommendation was totally and completely rejected by the federally recognized tribes. This recommendation was the recommendation of only one person, the Chairperson of the Task Force V, who is not a member of a federally recognized tribe. The other two Task Force V members were not made aware of that recommendation prior to publication of the Report. Tribal organizations repudiated that recommendation in an addendum to the Final Report of the AIPRC. The repudiation was made because of the same reasons that this testimony has listed.

It is easy to have the feeling that we are living through a recurring nightmare.

We have read testimony to be presented on May 16, 1978, by Billie Masters, Chairperson of the First American Caucus of the NEA that stated that the NEA supports the inclusion of BIA education functions in the proposed Department of Education that flows from endorsement by NEA members. We submit that this caucus has not consulted the affected tribal governments; that this caucus does not ^{have} ~~that~~ the best interests of tribes in mind in making its

recommendations; that this caucus made conclusions regarding the benefits of transfer that are not based on fact or experience, and most importantly, that the members of the caucus of First Americans do not carry any tribal credentials to speak for the tribal governments that would be affected.

We respectfully request that the record remain open for a minimum of 30 days so that tribes may submit additional testimony.